

MONTANA LEGISLATIVE HISTORY

Chapter 415 19 83

Bill H 415 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Feb 02 ✓ C

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Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 22 ✓ C

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Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

415 -- DAILY -- TO ALLOW A MUNICIPAL COURT JUDGE AND HIS LAW PARTNERS TO PRACTICE
LAW BEFORE ANY COURT OF THIS STATE EXCEPT THE MUNICIPAL COURT OF THAT JUDGE; AMENDING

INTRODUCED: 01/20/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/20/83
HEARING: 2/2/83
REPORT: 02/02/83, DO PASS
2ND READING: 02/04/83, DO PASS AYES: 91; NAYS: 3
3RD READING: 02/07/83, DO PASS AYES: 83; NAYS: 4
TRANSMITTED TO SENATE: 2/7/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/08/83
HEARING: 3/22/83
REPORT: 03/22/83, BE CONCURRED IN
2ND READING: 03/24/83 AYES: 49; NAYS: 0
3RD READING: 03/28/83 AYES: 47; NAYS: 0
RETURNED TO HOUSE: 3/28/83
TRANSMITTED TO GOVERNOR: 04/06/83
SIGNED: 04/08/83, CHAPTER 415

416 -- BROWN -- TO ALLOW RELEASE OF CERTAIN GENERAL INFORMATION PERTAINING TO A
PATIENT'S INJURY TO THE NEWS MEDIA BY A HEALTH CARE FACILITY IF A LAW ENFORCEMENT
AUTHORITY HAS REPORTED THE INJURY; AMENDING

INTRODUCED: 01/20/83
REFERRED TO COMMITTEE ON HUMAN SERVICES: 01/20/83
HEARING: 2/11/83
REPORT: 02/16/83, DO PASS, AS AMENDED
2ND READING: 02/17/83, DO PASS AYES: 73; NAYS: 26
3RD READING: 02/21/83, DO PASS AYES: 63; NAYS: 35
TRANSMITTED TO SENATE: 2/21/83
REFERRED TO COMMITTEE ON JUDICIARY: 3/1/83
HEARING: 3/22/83
REPORT: 3/23/83, BE NOT CONCURRED IN
BILL KILLED: 3/23/83

417 -- HAZELBAKER -- UPDATING THE LIST OF CONTROLLED SUBSTANCES CONTAINED
IN STATE LAW TO CONFORM WITH CONTROLLED SUBSTANCES LISTED IN THE CODE OF FEDERAL
REGULATION; AMENDING
AT REQUEST OF THE BOARD OF PHARMACISTS

INTRODUCED: 01/20/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/20/83
HEARING: 2/2/83
REPORT: 02/02/83, DO PASS, AS AMENDED
2ND READING: 02/24/83, DO PASS AYES: 98; NAYS: 0
3RD READING: 02/07/83, DO PASS AYES: 89; NAYS: 0
TRANSMITTED TO SENATE: 2/7/83
REFERRED TO COMMITTEE ON JUDICIARY: 02/08/83
HEARING: 3/5/83
REPORT: 03/03/83, BE CONCURRED IN
2ND READING: 03/05/83 AYES: 49; NAYS: 0

1 *House* BILL NO. *415*
2 INTRODUCED BY *Duffy*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A MUNICIPAL
5 COURT JUDGE AND HIS LAW PARTNERS TO PRACTICE LAW BEFORE ANY
6 COURT OF THIS STATE EXCEPT THE MUNICIPAL COURT OF THAT
7 JUDGE; AMENDING SECTIONS 3-1-601, 3-1-603 AND 3-1-604, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 3-1-601, MCA, is amended to read:

11 "3-1-601. Certain officers not to practice law or
12 administer estates. (1) No Except as provided in 3-1-604, no
13 justice or judge of a court of record or clerk of any court
14 may practice law in any court in this state or act as
15 attorney, agent, or solicitor in the prosecution of any
16 claim or application for lands, pensions, or patent rights
17 or other proceedings before any department of the state or
18 general government or any court of the United States during
19 his continuance in office.

20 (2) Neither the court administrator nor any assistant
21 may practice law in any of the courts of this state while
22 holding his position.

23 (3) No justice or judge of a court of record may act
24 as administrator or executor of any estate for
25 compensation."

1 Section 2. Section 3-1-603, MCA, is amended to read:
2 "3-1-603. No judicial officer of court of record to
3 have partner practicing law. (1) No Except as provided in
4 subsection (2), no judicial officer of a court of record
5 may have a partner acting as attorney or counsel in any
6 court of this state.

7 (2) A partner of a municipal court judge may act as
8 attorney or counsel in any court of this state except the
9 municipal court of his partner."

10 Section 3. Section 3-1-604, MCA, is amended to read:

11 "3-1-604. Restrictions on municipal court judges. No
12 municipal court judge may practice law before his own
13 municipal court or hold office in a political party during
14 his term of office."

-End-

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EXHIBIT F, a letter from Robert L. Deschamps, III, was submitted in favor of the bill.

There were no further proponents.

There were no opponents.

In closing, REPRESENTATIVE DONALDSON stated that the Department of Administrations is threatened by lawsuits almost on a weekly basis. He stated he was in favor of the amendments proposed.

REPRESENTATIVE KEYSER noted \$215,000 would come out of the state's insurance fund. What year will the different agencies be billed for this and when will the fund no longer cover this? YOUNG stated the actuary feels the fund is solid for the next five years.

REPRESENTATIVE JENSEN asked GLOSSER if a judgement was ruled against him. GLOSSER replied yes, a judgement of \$275,000 was ruled in favor of the other party. That case is currently being appealed. The flurry of threats of lawsuits has increased since that time.

REPRESENTATIVE ADDY was concerned with the wording "for damages". SENATOR MAZUREK replied damages include civil actions for personal injury and for property damage.

ROTHERING noted a decision from the United States Supreme Court states that under present federal law a person cannot file property damage claims against state officials. Instead, an action under the state tort claims act must be filed.

REPRESENTATIVE ADDY thought the bill as amended would shift the burden from the employer to the plaintiff. JOHNSON responded that if an action is filed because an employee has disobeyed a definite departmental policy, the amendments would make sure that type of person would be excluded from coverage. It would only take one bad employee to put the government office into a position that they would have to defend his actions when in reality they were opposed to his actions.

The hearing on the bill closed.

HOUSE BILL 415

REPRESENTATIVE DAILY, sponsor, stated this bill will allow a municipal court judge and his law partners to practice law before any court of this state except the court of that municipal judge.

REPRESENTATIVE DAILY noted the bill is being sponsored at the request of one of his constituents.

Current statutes do not allow a district court or municipal court judge to practice law in any court. This amendment would simply allow a municipal court judge to practice in other courts. This would comply with justice courts' current procedures.

WILLIAM GEAGAN, Attorney and Police Judge in Butte, stated he requested REPRESENTATIVE DAILY to sponsor the legislation. It would allow a judge of the municipal court, a court of record, to practice law in all other courts except his own. It would also allow his law partners to practice in any other courts.

GEAGAN noted the municipal judge's salary is not a generous one so, this bill will permit those judges to add to their income. There is only one municipal judge in the state, Judge Wallace Hart in Missoula. The judge cannot practice law because he is currently prohibited by statute. In speaking with JUDGE HART, GEAGAN noted he was in favor of the legislation.

There were no further proponents.

There were no opponents.

In closing, REPRESENTATIVE DAILY stated a municipal court judge receives the same type of training and must have the same qualifications as a district court judge. The only difference is the municipal judge must be a practicing attorney for two years and the district judge must be a practicing attorney for five years.

REPRESENTATIVE ADDY asked if there would be an adverse effect if an attorney faced a municipal court judge acting as a attorney, and was later to face the judge in his court in another matter. GEAGAN replied he did not think so. He felt both parties would act as professionals.

There were no further questions.

The hearing on House Bill 415 closed.

HOUSE BILL 429

REPRESENTATIVE HANNAH, sponsor, stated this bill will increase the penalties for discharging firearms within the limits of a city or town.

The fine is increased from \$25 to \$500 or imprisonment in the county jail not exceeding six months or both fine and imprisonment.

REPRESENTATIVE HANNAH felt that the present fine of \$25 is not a deterrent for this type of action. There have been various problems concerning damaged property and injured people.

A roll call vote was taken on the motion DO NOT PASS. Those voting yes were: D. BROWN, EUDAILY, KENNERLY, RAMIREZ, SCHYE, SEIFERT, SPAETH, and VELEBER. Those voting no were: ADDY, BERGENE, J. BROWN, CURTISS, DAILY, DARKO, HANNAH, IVERSON, JENSEN, and KEYSER. The motion failed 10 to 8. The vote was then reversed to a motion of DO PASS. The motion carried with a vote of 10 to 8. Those voting no above voted yes on this motion; those voting yes on the motion above voted no on this motion. House Bill 362 left the committee on a DO PASS motion.

HOUSE BILL 415

REPRESENTATIVE SEIFERT moved DO PASS, seconded by REPRESENTATIVE J. BROWN.

REPRESENTATIVE HANNAH asked if judges would go from district to district if the workload was too high. It was replied WALLACE CLARK is the only municipal judge in the state.

REPRESENTATIVE JENSEN stated that municipal courts are not set up in small rural areas. He felt that a judge should focus on being just a judge and not an attorney.

The motion of DO PASS carried with REPRESENTATIVE ADDY and JENSEN voting against the motion.

HOUSE BILL 417

REPRESENTATIVE J. BROWN moved DO PASS, seconded by REPRESENTATIVE EUDAILY.

REPRESENTATIVE CURTISS moved the committee change the misspelled words of "clonazepan" to "clonazepam" and "flurazepan" to "flurazepam". All were in favor of the motion.

REPRESENTATIVE J. BROWN moved DO PASS AS AMENDED, seconded by REPRESENTATIVE EUDAILY.

All were in favor of the motion. House Bill 417 left the committee on a DO PASS AS AMENDED recommendation.

OTHER MATTERS

BRENDA DESMOND presented the committee with EXHIBIT J, a proposed draft of a bill that would define the term "general election" for the purpose of submission to the people of laws or constitutional amendments by the legislature.

The draft was requested by the Committee Chairman because of uncertainty concerning the effect of 1979 changes in the election law on the law governing the submission of ballot issues by the

Mr. Jess Long testified that since the Legislature is trying to help solve the problem with drunk drivers by passing stricter laws, it should do the same for the problem of people passing school buses.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Crippen questioned Terry Brown as to how many children have been killed due to drivers passing a school bus when the red lights were flashing. Mr. Brown answered that although it has been eight years since a child has died, it is the number of near misses which is alarming.

Representative Eudaily closed the hearing on HB139 by testifying that school bus drivers report an average of 10-12 violations per week. Of all the violations reported, only 6 percent are ever taken to court. Representative Eudaily feels there is a low rate of convictions due to the lack of positive identification of the driver. Representative Eudaily stated it is the responsibility of the Legislature to make things safer for the children of Montana.

There being no further questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 415: Representative Daily, sponsor of the bill, stated that HB415 is a straight-forward bill. He testified that police judges have the same qualifications as district judges, the only exception being the length of time they have practiced law. Representative Daily informed the Committee that he is sponsoring this bill at the request of William Geagan, police judge for Butte-Silverbow County.

Mr. William Geagan then testified that he has been an attorney for 31 years. He would like to see HB415 pass because eventually he would like to abolish the police court in Butte-Silverbow County and have a municipal court since city courts do not receive much funding. Mr. Geagan stated that the police judge in Missoula also supports the passage of HB415. Mr. Geagan does not feel there would be any ill feelings by other attorneys if he were to practice law, because attorneys are professionals and try to conduct themselves in a professional manner.

There being no further proponents, no opponents and no questions from the Committee, the hearing was closed.

CONSIDERATION OF HOUSE BILL 416: Representative Jan Brown, sponsor of the bill, testified that she is sponsoring this bill at the request of the Montana Hospital Association. HB416 provides that the general physical condition of a patient can be released to the news media if the media is already aware of the incident. She testified that this bill only allows for release of a statement of the patient's general condition and does not provide for specific details to be released. Representative Brown feels this information should be released if it is of public interest.

PROPOSERS: Mr. Chad Smith, representing the Montana Hospital Association, testified that law adopted in 1979 limited the release of medical information by requiring the consent of the patient. He testified that the matter of the relationship with the news media was never considered in the adoption of this law. Mr. Smith feels that problems have arisen because the news media feels this information is public information, and the public has a right to know the results of an incident already reported. He stressed that the bill requires the release of information only if it is already reported by the news media, and the bill only requires the release of general information such as good, fair, poor, serious and critical condition, and not specifics.

There being no further proponents and no opponents, the hearing was opened to questions from the Committee.

Senator Mazurek was concerned that if a police officer made a statement off the record about an accident, this made the accident public information. Senator Mazurek stated that he feels the bill is too broad. Mr. Smith responded by stating that the public has a right to know how seriously an individual is injured.

Senator Halligan questioned whether the House of Representatives discussed the issue of mental illness and how it would be affected by HB416. Mr. Smith stated that mental illness had not been discussed in the House. The Committee was concerned with where public interest starts and where it stops.

Representative Brown closed the hearing by saying it was a real problem when hospitals start receiving calls inquiring about a patient's condition, and they are unable to give a definite answer. Representative Brown feels HB416 will help the hospitals overcome this problem.

There being no further questions from the Committee, the hearing was closed.

ACTION ON HOUSE BILL 415: Senator Berg moved that HB415 BE CON-CURRED IN. This motion carried unanimously.